

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program

Rulemaking 08-08-009
(Filed August 21, 2008)

**REPLY COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON
POTENTIAL RENEWABLES PORTFOLIO STANDARD DEVELOPMENT IN
THE IMPERIAL VALLEY AND EVALUATION OF RENEWABLE
PROCUREMENT CONTRACTS**

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Dated: March 6, 2009

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CONTRACTS**

I. INTRODUCTION

The Union of Concerned Scientists (“UCS”) respectfully submits these reply comments in response to comments submitted by parties on the February 3, 2009 Assigned Commissioner’s Ruling Regarding Potential Renewables Portfolio Standard Development in the Imperial Valley and Evaluation of Renewable Contracts (“ACR”).

UCS observes that parties’ opening comments reveal several concerns with adopting the Energy Division staff’s proposed Project Viability Calculator “as is.” These concerns suggest that it would be beneficial for the Energy Division to host an informal workshop to better define and explain the criteria used to evaluate project viability in the calculator. UCS’s reply comments also address SCE’s argument that project viability methodologies should be kept confidential and PG&E’s argument that changes to the Renewables Portfolio Standard (“RPS”) flexible compliance rules are beyond the scope of the instant rulemaking. These reply comments are summarized as follows:

- Inputs to the Project Viability Calculator Should be Clarified in an Informal Workshop
- The Methodology Used to Evaluate Project Viability Should be Transparent and as Standardized as Possible
- It is Appropriate to Examine Changes to Flexible Compliance Rules that are Related to Project Viability in This Phase of R.08-08-009
- Seller Non-Performance Should be Eliminated as an Excuse for Deferring Procurement Deficits

II. INPUTS TO THE PROJECT VIABILITY CALCULATOR SHOULD BE CLARIFIED IN AN INFORMAL WORKSHOP

Nearly all the parties that submitted comments on the ACR expressed concern with how certain criteria within the Energy Division’s proposed Project Viability Calculator, included in Attachment B to the Staff Proposal, should be interpreted, weighted, or adjusted. These concerns reinforce the need for Energy Division staff to hold an informal workshop that will bring parties together and define the standardized set of inputs and metrics that staff proposes be used to evaluate the viability of RPS contracts.

III. THE METHODOLOGY USED TO EVALUATE PROJECT VIABILITY SHOULD BE TRANSPARENT AND AS STANDARDIZED AS POSSIBLE

UCS disagrees with SCE that each Investor-Owned Utility’s (“IOU”) individual project viability methodology should be kept confidential.¹ Allowing each IOU to keep its evaluation methodology weightings confidential would reduce the transparency of an IOU solicitation process that already suffers from considerable lack of public confidence. Improving the transparency of the evaluation of project viability is critical to the Commission’s overarching goal of elevating the role of project viability in RPS procurement. SCE’s argument should be rejected.

UCS agrees with CalWEA that a transparent and standardized evaluation process will “increase the probability that state policy is applied consistently through each IOU’s solicitation process.”² Standardized and transparent metrics and weightings will increase the accountability of utilities to decide which renewable project bids make it onto the shortlist, facilitate comparisons of project viability scores across utility solicitations, and minimize administrative oversight. As CalWEA correctly states, “to the extent that the Commission permits IOUs to adopt differing approaches, comparisons of project viability scores across IOUs will have limited value.”³ The Commission should require IOU project viability evaluation methodologies to be both transparent and as standardized as possible.

¹ SCE, p.15.

² CalWEA, p. 7.

³ CalWEA, p.8.

IV. IT IS APPROPRIATE TO EXAMINE CHANGES TO FLEXIBLE COMPLIANCE RULES THAT ARE RELATED TO PROJECT VIABILITY IN THIS PHASE OF R.08-08-009

UCS disagrees with PG&E that Energy Division staff's proposal to use project viability to determine whether or not the contract should be eligible to use flexible compliance rules is a change that "should be made in a separate rulemaking, or phase of a rulemaking, regarding flexible compliance, not in an ACR on project viability."⁴ PG&E does not cite any Commission order or decision to substantiate this claim, and fails to acknowledge that the ACR "carries out [the] direction" provided by D.08-12-058 to identify how RPS rules might be modified to improve the RPS procurement process throughout the state.⁵ D.08-12-058 specifically instructs Energy Division staff to seek comments on "What changes should the Commission make to its existing rules that pertain to situations in which a renewable contract fails?"⁶ The Decision also identifies R.08-08-009 as the appropriate venue for examining seller non-performance and other issues related to project viability: "We also note that many of the concerns that parties have raised specific to the Sunrise Powerlink and Imperial Valley renewables currently under contract to SDG&E are not unique to these projects but instead reflect broader concerns about the RPS program itself. These matters are best considered in the context of R.08-08-009, the RPS implementation proceeding."⁷ Therefore, it is appropriate for Energy Division staff to examine in this phase of the proceeding how project viability evaluation assessments will interact with and impact other rules governing the RPS procurement process.

V. SELLER NON-PERFORMANCE SHOULD BE ELIMINATED AS AN EXCUSE FOR DEFERRING PROCUREMENT DEFICITS

UCS maintains that the best and most straightforward way to improve project viability and reduce the incidence of project failure or delay is to ensure RPS compliance rules are aligned with utility incentives to pursue the most viable projects. As UCS explained in its opening comments, eliminating seller non-performance as an excuse for deferring compliance would "unequivocally align Commission rules with utility incentives to pursue the most viable

⁴ PG&E, p.17

⁵ ACR, p.2.

⁶ D.08-12-058, p.267.

⁷ D.08-12-058, p.266.

projects.”⁸ Many parties mention in their ACR comments that even a standardized and transparent set of criteria to measure project viability will be at least somewhat subjective and open to interpretation and debate. The same factors and uncertainties that make project viability scoring so challenging will also be present in any future Commission determination of whether seller non-performance is truly due to “factors beyond the control of the utility,” which is the standard assumed by D.03-06-071.⁹ Eliminating seller non-performance as a trigger for invoking flexible compliance rules for all new RPS contracts and contract amendments will appropriately place the burden of ensuring project viability on the utilities, rather than relying on a Commission determination of seller non-performance that is based on an ambiguous and subjective standard.

UCS also believes that the project viability scores of RPS contracts that have already been approved by the Commission should be used to determine when the seller non-performance excuse can be used on a more limited basis. UCS supports restricting any “Category A” signed contracts (or signed contracts that fail to meet another subsequently adopted minimum project viability standard) from using seller non-performance as an excuse for deferring procurement deficits.

VI. CONCLUSION

For the foregoing reasons, UCS respectfully requests that the Commission adopt the recommendations set forth in these comments.

Respectfully submitted,

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⁸ UCS, p.5.

⁹ D.03-06-071

CERTIFICATE OF SERVICE

I, Miriam Swaffer, certify that on this date, I have caused the foregoing REPLY COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON POTENTIAL RENEWABLES PORTFOLIO STANDARD DEVELOPMENT IN THE IMPERIAL VALLEY AND EVALUATION OF RENEWABLE PROCUREMENT CONTRACTS to be served by electronic mail, or for any party for which an electronic mail address has not been provided, by U.S. Mail on the parties listed on the service list for the proceeding in California Public Utilities Commission Docket No. R.08-08-009.

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on March 6, 2009 in Berkeley, California.

/S/

Miriam Swaffer

VERIFICATION

I, Laura Wisland, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2009, in Berkeley, California.

 / S /
Laura Wisland